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THE MNESIMACHUS INSCRIPTION AT SARDES

THE first number of this JOURNAL for the current year contains the admirable publication by Mr. Buckler and Professor Robinson of an inscription which constitutes, at least from some points of view, the most important and most interesting contribution to knowledge made thus far by the excavations at Sardes. It is with the fullest appreciation of the carefulness and thoroughness of this publication that I wish to present a discussion of certain conclusions of the editors with regard to this valuable document, and to add certain suggestions of my own derived from a study of the document itself.

The editors regard this document as a deed of sale subject to redemption (*πρᾶσις ἐπὶ λύσει*). And I believe that this opinion is correct,¹ although those parts of the inscription which would decide this question conclusively have been erased. The words *μηκέτι ἀπολύσασθαι* in Col. II, 2 imply, though not certainly, as the editors state, that a period within which the property *might* be redeemed was provided in the lost part of this column. Moreover, the words in II, 5: *εἰς τὰ Ἀρτέμιδος ἐχέτωσαν* (*i.e.* *εἰάν τις ἐμποιῇται κτλ.*) seem to imply that even that limited ownership of the property enjoyed by Mnesimachus was not conveyed outright by this instrument. It appears then that this is not an absolute conveyance of title. On the other hand, Col. II shows that the temple of Artemis is granted by this document possession of the property, and the right to build upon it, to plant vines or trees, and to profit by the crops, the increase of the cattle, and the labor of the slaves or serfs attached to the property. Possession of this sort of course would not constitute ownership of the property; but even possession would not be conferred by an ordinary mortgage deed, without foreclosure or some sort of legal process.

¹ So also Larfeld in *Wochenschr. f. klass. Philol.* 1912, Sp. 998.

In my opinion, however, the editors are in error in their interpretation of the latter part of Col. I, namely, lines 11–18. Column I, from the words *ἔστι οὖν*, at the end of line 3, to the end of the extant document, line 18, contains a description of the property in which Mnesimachus had certain rights conveyed by him to the temple of Artemis, under certain restrictions, partly as security for a debt, and partly in lieu of interest on this debt until it should be paid. As the editors have observed, “Mnesimachus is not absolute owner of all the lands enumerated, for in II, 13 it is stated that the king can take them away from the temple *διὰ Μνησίμαχον*, i.e. by taking them away from Mnesimachus” (p. 52). In I, 11–18 mention is made of a certain “farmstead or *αὐλή*, outside which were certain peasants’ houses, plots of land, and slaves, enumerated by name” (p. 20). With regard to these properties the editors make the following statement: “This farmstead may perhaps, as belonging to those two men” (Pytheus and Adrastus), “be excepted from the present conveyance, but we believe that before this date it had passed into the ownership of Mnesimachus, through some dealings described in the lost beginning of this column” (p. 20).¹ The reason given by the editors for their belief is that “the *χωρία* and *οἰκέται* of II, 5, which are among the things granted” (by this document to Artemis) “refer to the items of I, 15–18, just as the *κῶμαι* and *κλήροι* of II, 5 refer to the items of I, 4–10” (p. 20 note). But that the *κῶμαι* and *κλήροι* of I, 5–10 include *χωρία* and the *οἰκέται* in or upon them, is proved by I, 11 f.: *ἐκ πασῶν οὖν τῶν κωμῶν καὶ ἐκ τῶν κλήρων καὶ τῶν οἰκοπέδων προσκυρόντων καὶ τῶν λαῶν πανοικίων σὺν τοῖς ὑπάρχουσιν κτλ.* It seems to me certain, therefore, that the properties mentioned in I, 14–18 are excepted from those in which Mnesimachus hereby cedes his rights to the temple of Artemis, because, before the execution of this document, these had been awarded to Pytheus and Adrastus. Formerly Mnesimachus had rights in the properties described in I, 4–10, and those in 14–18, and more besides (*καὶ χωρὶς τούτων ἔτι πλέον*, I, 13). Now Mnesimachus cedes to Artemis whatever rights he has in

¹ Larfeld, l.c., considers that the farmstead did belong to Pytheus and Adrastus, while the houses, etc., outside of this (ll. 14–18) were in the unrestricted possession of Mnesimachus.

the properties described in Col. I, excepting those mentioned in lines 14-18, the farmstead at Tobalmoura, houses of serfs and slaves, gardens at Tobalmoura, and dwelling-plots and gardens at Periasasostra. For this reason no *φόρος* is mentioned in connection with these latter items, because the *φόρος* from these was no concern either of Mnesimachus or of Artemis, and not because they belonged to Mnesimachus outright. The other items, mentioned in I, 4-10, are ceded to Artemis with the reservations that they are subject to certain fixed charges, doubtless payable to the king, and that the king may at any time cancel the title and recall the property. This second reservation, of course, did not need to be stated in this part of the document.

In another point I find myself in disagreement with the editors, namely, the interpretation of the last clause of the final sentence. This clause and its immediate context is as follows: *μέχρι δὲ ὅσον μὴ ἀποδώμεν ἔστω ἐν ἐμοὶ ἐν παρα(κα)-ταθήκῃ καὶ ἐν τοῖς ἐμοῖς ἐκγόνοις ἕως ἂν ἅπαν ἀποδώμεν εἰς τὰ Ἀρτέμιδος καὶ ἡ πρᾶξις τέως ἂν ἐξ ἡμῶν μήπω γένηται ἐξεῖναι.* Inserting a colon after the word *Ἀρτέμιδος*, the editors have translated the passage: "*And so long as we shall not have paid, the debt shall constitute a deposit-loan owing by me and my heirs until we shall have paid the whole to the treasury of Artemis; and so long as this still remains unpaid by us execution shall be lawful.*" All of Column II deals with the contingency that, through failure on the part of Mnesimachus or his heirs to defend the title, or by reversion to the crown, these lands may be lost both to Mnesimachus and to the temple of Artemis. It seems to me clear, however, that the infinitive *ἐξεῖναι* does not stand alone, as so often in resolutions and decrees; in such cases some such word as *ἔδοξε* is always readily supplied if not actually present. Here there is no suggestion of such a construction; always what is to be done is stated in the future indicative or in the imperative: "*we will make good the title . . . if not, let them pertain to Artemis,*" etc., and even the *ἀπολύσασθαι* of II, 2 must depend upon the *ἐξέστω*, which the editors have restored in the text, or on some similar verb, as is proved by the datives *ἐμοὶ* and *μηθενί*. The same is true in similar contracts and agreements. Consequently I believe that

ἐξεῖναι must depend upon γένηται, and that there should be no colon after Ἀρτέμιδος. At least the *impersonal* use of γίνεταί with a dependent infinitive is found in Classical Greek (*e.g.* Xen. *Oyr.* 5, 2, 12; cf. *Hel.* 5, 3, 10), and is frequent in post-Classical times, *e.g.* Acts xxii, 6: ἐγένετο δέ μοι . . . περιστράψαι φῶς, and xxii, 17: ἐγένετο δέ μοι . . . γενέσθαι με ἐν ἐκστάσει.

The meaning of *πρᾶξις* is made clear by the passage in Demosthenes, XXXV, 12, to which the editors refer on p. 17: καὶ ἐάν τι ἐλλείπη τοῦ ἀργυρίου, οὗ δέι γενέσθαι τοῖς δανείσασι κατὰ τὴν συγγραφὴν παρὰ Ἀρτέμωνος καὶ Ἀπολλοδώρου, ἔστω ἡ *πρᾶξις* τοῖς δανείσασι καὶ ἐκ τῶν τούτων ἀπάντων, καὶ ἐγγείων καὶ ναυτικῶν, πανταχοῦ ὅπου ἂν ᾧσι, καθάπερ δίκην ὠφληκότων καὶ ὑπερήμερων ὄντων: "*If there is any deficiency (after the sale of certain goods mentioned) in the money owed to the creditors according to the contract (Androkles and Nau-sikrates) by Artemon and Apollodorus, let the creditors' right of execution be upon all the property of these persons (Artemon and Apollodorus), lands or merchandise, wherever they may be, just as if these persons had lost in a suit at law and were in default of payment.*" Though this contract quoted by Demosthenes is, as the editors say, of doubtful authenticity, this use of the word *πρᾶξις* is confirmed by inscriptions. Dittenberger, *Sylloge*² II, 517, lines 11 ff., from Amorgos and dating from the second century B.C., contains the words: ἐὰν δὲ μὴ ἀποδῶσιμ, πρακτοὶ ἔστωμ Πραξικλεῖ οἱ μὴ ἀποδόντες ἡμῶλιον τὸ ἀργύριον ἐκ τῶν ἰδίων πράξει πάσῃ, καθάπερ ἐγ δίκης τέλος ἐχούσης κατὰ τὸ σύμβολον τὸ Ναξ[ίων κ]αὶ Ἀρκεσινέων. See also Dittenberger, *O. G. I. S.* II, 669, line 16, from Egypt, 68 A.D.: ἵνα αἱ πράξεις τῶν δανείων ἐκ τῶν ὑπαρχόντων ᾧσι καὶ μὴ(ι) ἐκ τῶν σωμαίων. Compare also the "Testament of Epicteta," from Thera, dated about 200 B.C., in *I. G.* XII, III, no. 330, lines 172-177. Consequently I believe that the *πρᾶξις* ἐξ ἡμῶν of the Sardes inscription stands for *πρᾶξις ἐκ τῶν ἡμῶν ὑπαρχόντων*, and that we should translate as follows: *And so far as we do not pay let it be (a liability) upon me in the character of a loan, and upon my descendants, until we pay all to the treasury of Artemis and so long as execution upon our property may not yet become possible.*

This conviction leads me also to question the conclusions of the editors on p. 60 f. with regard to the word *παρακαταθήκη*. This word occurs in the inscription three times, namely, in Col. II, lines 11, 13, and 18; it has also been restored by the editors in I, 3, where the extant text reads τὸ χρυσίον τῆς [10 or 11 letters]ης τὸ τῆς Ἀρτέμιδος. The restoration of [*παρακαταθηκ*]ης is certainly plausible, and, if correct, shows that before the date of the present document a *παρακαταθήκη*, or loan of some sort, had been made by the temple of Artemis, and that at the date of the present document its return had been demanded of Mnesimachus. But neither in this place nor in Col. II, 11, 13, or 18 is anything said about the nature of a *παρακαταθήκη* in general, or about the terms of this loan in particular. Consequently I do not believe with the editors that this document establishes the three points which they mention:

(1) That "a deposit loan was then, as in later times, repayable on demand." Nothing in the present document shows whether the original loan was payable on demand, or whether its prescribed term had expired. At a certain time demand was made for money due. The amount appears from II, 13 f. to have been 1325 gold staters, and this amount is the basis of this new contract.

(2) That "*παρακαταθήκη* was in use at this period for the lending of money at interest, since there can be no doubt that Mnesimachus paid interest on his original deposit-loan. This may be inferred from the mention of principal (*ἀρχαῖον* II, 13), which implies interest (*τόκος*) as its accompaniment . . . as well as from the stipulations in II, 8-10, 16-18, designed to protect the goddess from loss of the annual income on her investment." But in the first place, the *ἀρχαῖον* of II, 13 does not signify the principal as contrasted with interest, but only the original sum, 1325 gold staters, as distinguished from the 2650 gold staters, which, under certain circumstances, Mnesimachus may be obliged to pay. Secondly, the stipulations in II, 8-10 and 16-18 have nothing to do with the previous contract, supposedly on the basis of a *παρακαταθήκη*. I do not suppose that the temple of Artemis ever lent money without a profit of some sort. But we cannot learn here what that profit was under the original agreement. The present agreement provides for a

profit to the temple only from the income of the properties hereby ceded to the temple, at least temporarily, by Mnesimachus, as the editors themselves recognize. This is of the very essence of a "sale subject to redemption." The income from the property belonged to the creditor who was formally the purchaser, and provided for him a return from his investment in lieu of interest: if the borrower, by special arrangement, as sometimes happened, retained possession, he did so by paying to his creditor rent, which was doubtless equal in amount to the interest which would normally be charged on the money borrowed, but which none the less was formally rent for the use of property no longer belonging to him. See Büchsen-schütz, *Besitz und Erwerb*, p. 493. In all the document before us there is no allusion to interest either on a *παρακαταθήκη* or on any sum whatever.

(3) That "the contract of *παρακαταθήκη* must at this period have been equipped with the same penalty for non-payment as in the first and second centuries A.D., when the papyri show that the defaulting debtor was liable for twice the amount of the original loan." It is not impossible that this was the case; but there is no evidence, direct or indirect, with regard to this matter in the present document. The penalty mentioned in II, 7 and 8 is expressly for failure of warranty on the part of Mnesimachus or his heirs, or for any breach of this contract on their part. What the law was at this time in Sardes, with regard to a *παρακαταθήκη*, does not appear. Lines 11, 13, and 18 of Column II state merely that any arrears in the payments to which Mnesimachus and his heirs are bound, in case these properties are lost to the temple of Artemis, shall be regarded as a *παρακαταθήκη*, whatever that may be, and shall be subject to the laws governing loans of that sort.

Finally there is a question, not discussed by the editors, which seemed to me of greater interest than any of those matters mentioned above, the question why a large part of this inscription was erased. In April of this year, when this article was first written, I believed that this document had been cancelled by this erasure, and for the reason that Mnesimachus had paid his debt. The editors state on p. 12 that the first part of each column has been "effaced by careful chiselling,"

and this statement can easily be verified by an examination of the photographs of the stone itself, admirably reproduced in plates I and II of their publication. The amount of the inscription thus expunged is estimated by the editors on p. 22 as "scarcely more than ten lines," or about one third of the whole. By comparing a mortgage contained in a "papyrus text from Hermoupolis (153 A.D.)," the editors have shown, almost to a certainty, what the erased portions of the Sardes inscription originally contained. The missing part of Column I must have contained "(A) the date and names of the parties, Mnesimachus as grantor and the goddess Artemis as grantee; (B) a statement, of which the end only has survived in lines 1-3, as to the particulars of the loan of 1325 gold staters and as to Mnesimachus' ownership of the estate (*oikos*) conveyed. This statement must have recited (1) the making of the deposit-loan by the goddess; (2) when and how Mnesimachus had acquired the estate" (p. 19). The missing part of Column II "contained the end of the description of the property (C)." "Then must have followed (D) the granting clause, by which all the items described were conveyed to the goddess, in consideration of the 1325 gold staters previously advanced by her, with the proviso that Mnesimachus and his heirs might redeem within a fixed time, after which neither they nor any one else should have the right of redemption. The end of this proviso survives in II, 2" (p. 20).

But without these missing portions, and in particular without (A) the date and names of the parties and (D) the granting clause, the whole document is invalid. Without them there is no deed here and no contract. If there is no deed and no contract, then the penalties for failure of warranty or for breach of contract have no force. Nor could the temple enforce its claim upon Mnesimachus for reimbursement either for improvements made upon the land, or for crops sown but not reaped, since these claims were good only if the property was taken from the temple by other claimants or by the king: if the property is not granted to the temple, it cannot be taken from the temple, and Mnesimachus is under no liability whatsoever, so far as can be shown by this document in its present condition.

In support of my opinion I collected examples of mortgage

stelae on which the inscription had been erased, evidently because the creditor had been satisfied, while the stone itself remained intact: also other examples of inscriptions in which erasures have been found. In some of these examples the whole document has been erased, although the text can still be read in spite of the erasure, or the character of the inscription discovered in some other way. In others a part of the document has been expunged while the rest has remained in force. In others again, only the part which made the document as a whole valid and binding has been removed, the rest, now invalid, remaining untouched. I believed that the Mnesimachus inscription belonged to this last class, and suggested that the rest of this long document was left upon the temple wall to show what kind of business the temple did and on what scale; in other words, as a kind of advertisement.

This idea, which may have occurred to others, has been shown to be incorrect by later information which the excavators have very kindly placed at my disposal. Mr. Buckler informs me that his statement on p. 12 of the original account of this inscription, "On three sides of this block all remains of the wall have disappeared," is incorrect; on the east side the block is not bare, but is in contact with another, 1.10 m. long and of equal height with the inscribed block. Both blocks belong to the north wall of the "opisthodomus," the second extending to the northeast corner of this apartment, adjoining the cella. The second stone is chiselled in the same way down to the same level as the block which bears the inscription. Moreover, the east end of the inscribed block, beyond the right end of the inscription, shows the same chiselling. The black space at the right of the inscription in PLATE II, which I supposed to indicate the end of the block, is the heavy shadow cast by a strip of iron leaning against the stone. No other block, however, besides these two, was found, belonging to this course in this part of the building.

It appears, therefore, as stated by the editors of the inscription in the note below,¹ that at some late time a large part of the tem-

¹ This wall has remained intact as far up as the block bearing our inscription, but all remains of masonry have disappeared above, behind, and at the west end of this block. Its east end is in contact — the point being extremely fine —

ple was converted into a reservoir. The floor of the "opisthodomus" was some feet below the level of the floor of the cella proper. When the reservoir was made, the wall between the two parts of the building was removed, and the opisthodomus was filled up to the level of the cella. This filling, the floor of the cella, and the walls were then coated with water-tight cement. The bottom of the chiselling on both blocks corresponds exactly to the level of the floor of the reservoir; the extant portions of the two columns of the inscription, therefore, were below this new floor, and were covered by the filling. Consequently, the chiselling, which erased the upper parts of the inscription, and which appears also on the uninscribed block, dates from the making of the reservoir, that is, from comparatively late times, when the building was no longer used as a temple, and the object of this chiselling was to render the surface of the wall rough enough to hold the coating of cement. It follows that this document was not cancelled to prove that Mnesimachus paid his debt. Of course it is to be hoped that he did pay, however, and obtained some sort of a receipt.

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with a marble block of equal height (0.88 m.), 1.10 m. in length, the east end of which touches the northeast corner of the opisthodomus. The horizontal strip of chiselling on the inscribed block is prolonged without a break across the whole south face of this adjacent block. In the immediate neighborhood of these two blocks the rest of the course of masonry to which they belong has now vanished (cf. *A.J.A.* XV, pl. X). At some time in the Byzantine period the great building, no longer used as a temple, was fitted up as a reservoir. It was then doubtless that these blocks—as well as others adjacent, which have since been destroyed—were chiselled so as to enable the inner face of the wall to hold a waterproof lining. The lower part of the wall and of its inscribed surface escaped chiselling because the bottom of the opisthodomus was filled with rubble to make its floor level with that of the cella, and this filling protected both wall and inscription up to the horizontal line, formed by the floor of the reservoir, at which the chiselling and lining began.

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